

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 817 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KHEDA DISTRICT CENTRAL COOP BANK

Versus

VINUBHAI A PANDIT

Appearance:

MR HM PARIKH for Petitioner

MR UM SHASTRI for Respondent No. 1, 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 15/10/1999

ORAL JUDGEMENT

1. Applicant, who is the judgment creditor of Arbitration Case No.632 of 1986, has filed this Civil Revision Application under Section 115 of the Code of Civil Procedure, challenging judgment and order dated February 4, 1995, passed by learned 4th Joint Civil Judge (S.D.), Nadiad, in Civil Misc. Application No.85 of 1992.

2. The applicant is a cooperative society registered under the provisions of Gujarat Cooperative Societies Act, 1961. The applicant-society is running a Bank in the name of Kheda District Central Cooperative Bank, at Nadiad. Respondent No.2 was employed by the applicant-Bank and was working as Cashier. It is the case of the applicant that respondent No.2 had misappropriated an amount of Rs.6,78,568.64 ps while he was working as cashier in the applicant-Bank. The applicant-Bank, therefore, filed a suit, being Arbitration Case No.632 of 1986, before the Board of Nominees. The above suit was decided in favour of the applicant-Bank and an award came to be passed against respondent No.2 awarding a sum of Rs.6,78,568.64 ps in favour of the applicant-Bank. Thereafter, the applicant-Bank filed Execution Petition, being Special Darkhast No.63 of 1989, before the learned Civil Judge (S.D.), Nadiad. In the said darkhast, properties bearing Survey Nos.3264 and 3168 of Nagarwada, Mahudha were attached.

3. Respondent No.1 is the father of respondent No.2. Respondent No.1 moved an application in Special Darkhast No.63 of 1989 under Order XXI Rule 58 of the Code of Civil Procedure, which was numbered as Civil Misc. Application No.85 of 1992. In the said application, respondent No.1 prayed to release the suit properties from the attachment.

4. Civil Misc. Application No.85 of 1992 was heard by learned 4th Joint Civil Judge (S.D.), Nadiad, who, by judgment and order dated February 4, 1995, allowed the said application by releasing the properties bearing Survey Nos. 3264 and 3168 of Nagarwada Maudha from the attachment, giving rise to filing of this Civil Revision Application.

5. Respondent No.1 had filed Civil Misc. Application No.85 of 1992 under Order XXI Rule 58 of the Code. Rule 58 of Order XXI of the Code reads as under:

"(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule(1) refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive."

The learned Civil Judge without raising issues and recording evidence had disposed of Misc. Civil Application No.85 of 1992 and released the properties which were attached under the execution. Rule 58 clearly provides that whenever an application under the said Rule is filed, all questions arising between the parties to a proceeding and relevant to the adjudication of the claim or objection shall be determined by the Court dealing with the claim or objections and not by a separate suit. The learned Judge ignored the provision of Rule 58 and decided the application without raising issues and in absence of recording any oral evidence. Even though the petitioner was represented by advocate in Misc. Civil Application, the Trial Court had exhibited property register cards at Exh.33 and Exh.34 without the same being proved before the Court. The procedure adopted by the Trial Court in disposing of Misc. Civil Application filed under Order XXI Rule 58 of the Code ignoring the said provision is illegal and requires to be quashed and set aside. The Trial Court had exercised the jurisdiction vested in it illegally and with material irregularity, which has caused grave injustice and prejudice to the applicant.

6. As a result of foregoing reasons, this Civil Revision Application is allowed. The judgment and order dated February 4, 1995, passed by learned 4th Joint Civil Judge (S.D.), Nadiad, in Civil Misc. Application No.85 of 1992 is quashed and set aside. Civil Misc. Application No. 85 of 1992 is remanded back to the Trial Court with direction to dispose it of in accordance with provisions of Order XXI Rule 58 of the Code of Civil Procedure after giving full opportunity to the parties to lead evidence in support of their case. Rule is made absolute to the aforesaid extent with no order as to costs.
